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Plaintiff in Pro Se

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,

Plaintiffs

v.

ROWELL RANCH RODEO, INC., et al.,

Defendants

Case No. 3:23-cv-01652-VC

**PLAINTIFFS' MOTION *IN LIMINE* NO.
2 TO EXCLUDE TESTIMONY BY
DEFENDANTS' POLICE PRACTICES
EXPERT JAMES I. DUDLEY**

Trial date: October 21, 2024
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Courtroom: 5, 17th Floor

I. Introduction

The Court should preclude Defendants from offering inadmissible testimony at trial by Defendants' HARD and ACSO's designated Rule 26(a)(2)(B) police practices expert James I. Dudley. Mr. Dudley's "Rule 26(a)(2)(B) Expert Report, rev. May 23, 2024" ("Report") contains legal conclusions and should be precluded on this basis alone. Further, any testimony related to Defendants' liability for claims against Defendants ACSO, Mayfield, HARD and Hart under the Bane Act should be excluded because it is more prejudicial than probative, particularly considering the Court's framing of the remaining legal issues. Cal. Civ. Code, § 52.1. The Bane Act does not require a showing of animus or intent on behalf of Defendants, and the Court determined that an objective test applies to determine whether plaintiffs felt threatened, intimidated, or coerced. Testimony by Mr. Dudley concerning legal standards or Defendants' state of mind is therefore irrelevant, more prejudicial than probative, likely to confuse the issues and mislead the jury, and a waste of this Court's time. Accordingly, testimony or evidence by Mr. Dudley should be precluded from trial, pursuant to Federal Rules of Evidence 702, 703 and/or 705, 402, 403, 801 and 802.

II. Legal Standard

Federal Rules of Evidence 402 and 403 limit admissible evidence to relevant evidence and exclude otherwise relevant evidence if its probative value is substantially outweighed by the danger of "unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

A person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates. Fed. Rule Evid. 702. Rule 702 "require[s] that the judge apply his gatekeeping role...to all forms of expert testimony, not just scientific testimony," and that "judges are entitled to broad discretion when discharging their gatekeeping function." *Hangarter v. Provident Life ¶ Acc. Ins. Co.*, 373 F.3d 998, 1017 (9th Cir. 2004). Additionally, under Rules 701 and 702, opinions must be helpful to the trier of fact. In fact, "an expert may only testify as to 'scientific, technical, or other

1 specialized knowledge [that] will assist the trier of fact to understand the evidence or determine a
2 fact in issue[.]” *United States v. Tamman*, 782 F.3d 543, 552-553 (9th Cir. 2015).

3 **III. Argument**

4 **A. Mr. Dudley is not qualified to testify about legal conclusions, legal issues 5 including elements of claims, or the sufficiency of evidence**

6 **1. Mr. Dudley is not qualified to offer opinions presented**

7 This court has broad latitude in both determining whether an expert’s testimony is reliable,
8 and “in deciding *how* to determine the testimony’s reliability.” *Hangarter*, 373 F.3d at 1017
9 (citations omitted, emphasis in original). A reliability determination is not “contingent upon a
10 particular methodology or technical framework,” to fulfill the Court’s gatekeeping function. *Id.* at
11 1018. In fact, this obligation may be fulfilled by analysis of Mr. Dudley’s knowledge and
12 experience. *Id.* at 1018.

13 Defendants offer Mr. Dudley as an expert in police practices. Therefore, he cannot testify as
14 to legal standards. *Tamman*, 782 at 554. Mr. Dudley’s “Attachment D” to his Report lists his
15 qualifications as an expert. Mr. Dudley’s expert qualifications state “columnist and podcaster,”
16 “police practices consultant,” and detail various roles held in the San Francisco Police Department,
17 including as Police Officer, Sergeant, Lieutenant, and Captain. *See* Report. Neither the Report nor
18 Mr. Dudley’s curriculum vitae disclose any experience, expertise, or any other qualifications
19 relevant to offering legal conclusions, such as a juris doctorate. *Id.* at pp. 27-29.

20 Mr. Dudley states that his roles as a police officer included training in crowd control and
21 overseeing demonstrations and protests. Report, p. 26. He lists teaching experience, including
22 classes in police and public policy and consulting positions as a senior project manager for a public
23 safety strategies group. *Id.* None of Mr. Dudley’s academic credentials, experience, affiliations,
24 publications, presentations, or assessments is relevant to stating legal conclusions nor does it
25 support a foundation of reliability for testimony concerning legal conclusions.

2. Testimony concerning Defendants’ state of mind and duty of care is irrelevant and more prejudicial than probative

This Court has discretion to determine whether Mr. Dudley’s testimony is relevant, reliable, and helpful to the jury. *Humetrix*, 268 F.3d at 919. To establish liability under the Bane Act, Plaintiffs must set forth evidence of a threat, intimidation, or coercion that interferes or attempts to interfere with the exercise or enjoyment of rights secured by the constitutions or laws of the state or the United States. Cal. Civ. Code, § 52.1. As Plaintiffs stated in their Summary Judgment Motion, “[t]here is no requirement to prove animus or intent; a defendant is liable if they interfered with the plaintiff’s constitutional rights.” Dkt. 84, p.17: 23-26, citing *Austin B. v. Escondido Union School Dist.*, 149 Cal. App. 4th 860, 883. And the Court’s Order emphasized that an objective test applies in a Bane Act claim, “Asking whether a reasonable person in the plaintiff’s position would have felt intimidated, threatened, or coerced by the actions of the defendant.” Order, pp. 2-3, citing *Richardson v. City of Antioch*, 722 F. Supp. 2d 1133, 1147 (N.D. Cal. 2010).

Mr. Dudley is offered as an expert in police practices. He is not permitted to testify about legal standards, nor conclusions of law. Plaintiffs anticipate, based on counsel’s September 3, 2024, meet and confer, that Mr. Dudley’s planned testimony will cover a range of topics, including Defendants’ duty of care and whether specific elements of Plaintiffs’ legal claims are met. For instance, counsel indicated that testimony may address Defendants’ state of mind in responding to Plaintiffs at the rodeo and whether such a response was reasonable. According to Mr. Dudley’s Report, his “Scope of review” is to determine if: (1) the County provided a ‘Duty of Care’ fitting to the situation during the [protest] at Rowell Ranch Rodeo on May 20, 2022; (2) the protester/demonstrators at the rodeo were given reasonable access at the event; (3) the “time place, and manner” access were not denied due to the content of the protest; (4) instructions given to the protesters were reasonable and in compliance with industry standards; and, (5) the protesters were not threatened with arrest at the event. Report, p. 4.

Any testimony consisting of legal conclusions, should be precluded not only because Mr. Dudley is not qualified to offer such (see Section A.1.) but because the probative value of inclusion is outweighed by the danger of unfair prejudice, confusing the issues, and misleading the jury. Fed. R. Evid. 403. This is particularly true considering this Court’s Order Granting in Part and Denying in Part Cross-Motion for Summary Judgment (“Order”). Dkt. 129. The Court stated, in regarding to Plaintiffs’ Bane Act claims, an objective test would apply to determine whether “a reasonable person in plaintiff’s position would have felt intimidated, threatened or coerced by the actions of the defendant.” Dkt. 129, pp. 2- 3. Yet, Mr. Dudley states in his Report, “At no time did it appear that either Cuvillo nor Bolbol seemed afraid or intimidated by the deputies.” Report, p. 10. Any potential testimony Mr. Dudley may offer regarding either Plaintiffs’ subjective belief of fear or intimidation as it relates to Plaintiffs’ Bane Act claims is therefore misleading. The Court already ruled on the test to be applied. Order, p. 4. Allowing Mr. Dudley to deliver a paid opinion as to whether Plaintiffs felt threatened, which is irrelevant because an objective not subjective test applies to the Bane Act claims, is likely to confuse the jury. Fed. R. Evid., 403.

No element of Plaintiffs’ Bane Act claims requires an expert opinion. Mr. Dudley states an opinion that Defendants provided a “Duty of Care” during the [Rodeo] on May 20, 2022.” *Id.*, p. 12. He writes, “there were no attempts made to restrict or dissuade protestors at Rowell Ranch based on content, but in relation to their positions on pathways, roadways and in impeding free movement by the patrons attempting to enter the rodeo.” *Id.*, p. 5. He adds his opinion that “protesters were not threatened with arrest at the event.” *Id.*, p. 14. Dudley’s “conclusions,” couched as opinions, seek to refute an element of Plaintiffs’ Bane Act claims, which only require a showing that “threats, intimidation, or coercion” were carried out with the intent to interfere with a constitutional right. Cal. Civ. Code, § 52.1. Again, the Court made clear that an objective test applies to this test. Order, p. 3. The Court further instructed, “reasonable people could disagree...about whether Deputy Mayfield telling the plaintiffs they could be arrested for trespassing constitutes a threat of arrest.” *Id.* The Court added that reasonable people could differ as to whether Defendant Hart stating that failure to relocate to the free speech area will not be good “rises to the level of a threat.” *Id.* At no

1 point did the Court address any subjective belief, state of mind of the officers, or any other conduct
2 or emotional state on the part of the officers which may be relevant to Plaintiffs' claims. *See* Order.

3 **B. Mr. Dudley's testimony should be excluded on the grounds it is hearsay**
4 **evidence.**

5 A statement under the Federal Rules of Evidence includes a "person's oral assertion, written
6 assertion, or nonverbal conduct, if the person intended it as an assertion." Fed. R. Evid. 801(a).
7 Hearsay statements are those "a party offers in evidence to prove the truth of the matter asserted in
8 the statement." Fed. R. Evid. 801 (c)(2). Regarding nonverbal conduct, that "may be offered as
9 evidence that the person acted as he did because of his belief in the existence of the condition
10 sought to be proved, from which belief the existence of the condition may be inferred." Fed. R.
11 Evid. 801, Notes of Advis. Comm. subdiv. (a). "This sequence is...an assertion of the existence of
12 the condition" and falls within the concept of hearsay. *Id.*

13 Any testimony Mr. Dudley provides at trial based on his interpretation of Plaintiffs' oral
14 assertions and nonverbal conduct, offered for the truth of the matter, should be excluded on the
15 grounds they are inadmissible hearsay evidence. Fed. R. Evid 801. Mr. Dudley's Report relies upon
16 various materials, including a cache of 36 videos of body worn cameras from Defendant ACSO
17 deputies. Report, p. 19. In his Report, Mr. Dudley writes, "at no time did it appear the
18 protestors...seemed fearful or afraid of being arrested." Report, p. 15. As stated in Section B, above,
19 this improper testimony should be excluded on the grounds that it is a conclusion of law that is
20 misleading, potentially confusing to the jury, and irrelevant. It is *also* hearsay evidence as it speaks
21 to the truth of whether Plaintiffs felt threatened with arrest. Fed. R. Evid. 801, Notes of Advis.
22 Comm.

23 **IV. Conclusion**

24 For the foregoing reasons Plaintiffs respectfully request that this Court grant Plaintiffs'
25 motion *in limine* precluding Defendants' police practices expert James I. Dudley from providing
26 inadmissible testimony or opinion regarding legal conclusions, legal opinions, and from testifying
27 on hearsay.

Respectfully submitted,

DATED: September 10, 2024

/s/ Lily A. Rivo
Jessica Blome
Lily A. Rivo
GREENFIRE LAW, PC
Attorney for Plaintiff Deniz Bolbol

DATED: September 10, 2024

Joseph P. CuvIELLO
JOSEPH P. CUVIELLO
Plaintiff In Pro Se

PROOF OF SERVICE

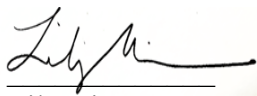
I am employed in the County of Alameda. My business address is 2748 Adeline Street, Suite A, Berkeley California 94703. I am over the age of 18 years and not a party to the above-entitled action. Document(s) served:

**PLAINTIFFS' MOTION IN LIMINE NO. 2 TO EXCLUDE TESTIMONY BY
DEFENDANTS' POLICE PRACTICES EXPERT JAMES I. DUDLEY**

On September 10, 2024, I served the foregoing document(s) on the parties in this action, located on the attached service list as designated below:

- () By First Class Mail, where indicated: Deposited the above documents in a sealed envelope with the United States Postal Service, with the postage fully paid.
- () By Personal Service: I personally delivered each in a sealed envelope to the office of the address on the date last written below.
- () By Overnight Mail: I caused each to be placed in a sealed envelope and placed the same in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- (X) By Electronic Transmission: Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 20, 2024, in Berkeley, California.



Lily Rivo

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO and DENIZ
 BOLBOL, individually,

Plaintiffs,

v.

ROWELL RANCH RODEO, INC.;
 HAYWARD AREA RECREATION AND
 PARK DISTRICT; HAYWARD AREA
 RECREATION AND PARK DISTRICT
 PUBLIC SAFETY MANAGER/RANGER
 KEVIN HART; ALAMEDA COUNTY
 SHERIFF'S OFFICE; ALAMEDA COUNTY
 DEPUTY SHERIFF JOSHUA MAYFIELD;
 and DOES 1 and 2, in their individual and
 official capacities, jointly and severally,

Defendants.

Case No. 3:23-cv-01652-VC

**DEFENDANT COUNTY OF
 ALAMEDA'S OPPOSITION TO
 PLAINTIFFS' MOTION *IN LIMINE*
 NO. 2 TO EXCLUDE TESTIMONY BY
 DEFENDANTS' POLICE PRACTICES
 EXPERT JAMES I. DUDLEY**

Action Filed: April 6, 2023
 Trial Date: October 21, 2024

1 **I. INTRODUCTION**

2 Defendants County of Alameda and Dep. Joshua Mayfield (“the County Defendants”)
 3 hereby oppose plaintiffs’ Motion in Limine No. 2 to Exclude Testimony by Defendants’ Police
 4 Practices Expert James Dudley. Cap. Mayfield is highly qualified to offer admissible opinions
 5 about, inter alia, about the relevant law enforcement standard and whether Dep. Joshua Mayfield
 6 and Hart Safety Manager Gary Hart violated that standard.

7 **II. LEGAL DISCUSSION**

8 **A. Mr. Dudley is Highly Qualified to Provide Opinions in this Case**

9 Cap. Dudley is highly qualified to give opinions in this case based on his training and
 10 experience. See *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1015 (9th Cir.
 11 2004) (“In certain fields, experience is the predominant, if not sole, basis for a great deal of
 12 reliable expert testimony”).

13 Cap. Dudley was employed by the San Francisco Police Dept. in July 1980. He attended
 14 the SFPD (“SFPD”) Police Academy at that time and earned the California Police Officers
 15 Standards and Training (“POST”) Basic Certificate. He later earned the POST Intermediate,
 16 Advanced, Supervisory, Executive Certificates over the course of his career. He was promoted to
 17 Sergeant/inspector in 1990, to Lieutenant in 1995, to Captain in 1998, Commander of Patrol and
 18 then Special Operations and Homeland Security in 2002-2004, and to Deputy Chief of Patrol and
 19 Investigations in 2011. During this time and in various capacities, he was in charge of handling
 20 and managing numerous protests and demonstrations. He is highly familiar with law enforcement
 21 training in crowd control and First Amendment issues.

22 Cap. Dudley graduated from FBI National Academy in Quantico, Virginia in 1998,
 23 receiving a certificate in Law Enforcement Executive Training. He received a BA in Criminal
 24 Justice from San Francisco State University in 2000, and an MA in Criminology from U.C. Irvine
 25 in 2015. Cap. Dudley retired from UCPD in 2013, at which time he became lecturer in Criminal
 26 Justice Studies, a position he has held up to the present. He was an instructor for POST from
 27
 28

2000-2009. He has published approximately 34 articles in the law enforcement field in the last 10 years.

B. The Scope of Cap. Dudley's Opinions¹

Cap. Dudley may opine at trial as to 1) whether the conduct of defendants ACSO Dep. Joshua Mayfield and HARD Safety Manager were reasonable and in compliance with the relevant law enforcement standard of care; and whether Dep. Mayfield threatened plaintiffs with arrest. Dep. Dudley is well qualified to provide these opinions to the jury, in light of his law enforcement education and training, his employment by SFPD, and academic teaching and publication.

C. Cap. Dudley's Opinions Are Admissible

Experts typically cannot opine about the applicable legal standard, as this would invade the province of the court. *Burkhart v. Washington Metro Area Transit Auth.*, 112 F.3d 1207, 1212 (D.C. Cir. 1997). Experts are permitted, however, "to express an opinion on an ultimate issue to be decided by the jury." *Davis v. Masson County*, 927 F.2d 1473, 1484-86 (9th Cir. 1991) (expert may opine that sheriff was reckless in failing to properly train his deputies); *Vucinich v. Paine, Webber, Jackson & Curtis*, 803 F.2d 454, 461 (9th Cir. 1986) (expert may opine as to suitability of investments and adequacy of information conveyed to investor); *Hangarter v. Provident Life & Accident Ins. Co.*, supra, 373 F.3d at 1016 (expert properly testified that insurer deviated from industry standard in terminating benefits, as he did not testify that insurer acted in bad faith, the ultimate issue of law); *Lees v. Carthage College*, 714 F.3d 516, 525 (7th Cir. 2013) (expert may consult industry standards).

In addition, an expert may opine as to legal matters where those matters involve questions of fact. *Waco Int'l, Inc. v. KHK Scaffolding Houston, Inc.*, 278 F.3d 523, 533 (5th Cir. 2002) (attorney may testify as to issues an attorney usually investigates in deciding whether to seek ex parte seizure); *Huddleston v. Herman & MacLean*, 640 F.2d 534, 552 (5th Cir. 1981) (attorney could testify that language used in prospectus was boiler plate because it was relevant to proof of defendants' state of mind).

¹ Because plaintiffs did not depose Mr. Dudley, their discussion of his opinions and the basis for them is rather sketchy.

D. Cap. Dudley’s Opinions are Relevant to this Case and Will Help the Jury

Expert opinion is appropriate when the jury will not be able to decide a factual issue without special assistance in an area unfamiliar to it. *Lauzon v. Senco Products, Inc.*, 270 F.3d 681, 686 (evidence based on specialized knowledge may be useful to the jury in deciding the ultimate issue of fact).

The jury, of course, will not know anything about the relevant industry-wide law enforcement standard. Accordingly, Cap. Dudley may opine as to the law enforcement standard as it pertains specifically to handling nonviolent demonstrators and respecting their free speech rights in the context of also protecting rodeo patrons’ rights to access the rodeo. In California, this standard is set, in part, by the State of California’s Commission on Peace Officer Standards and Training (“POST”). In the Commission’s own words, “The POST-certified Regular Basic Course (basic academy) is the training standard for police officers, deputy sheriffs, school district police officers, district attorney investigators, as well as a few other classifications of peace officers.”²

He may opine as to the POST training and instruction Dep. Mayfield and Mr. Hart received handling demonstrations and in free speech issues. He may opine as to whether they acted within their POST training and instruction, and more generally within the industry-wide law enforcement standard, in the face of plaintiffs’ conduct. For example, he may opine as to what a law enforcement officer should reasonably do when presented with a citizen complaint by a rodeo patron that someone is blocking their access (under the specific circumstances, should he ignore it? investigate it? act upon it?). Under the specific factual circumstances of this case, including Mr. Cuiello’s demands, did Dep. Mayfield have a duty to tell him whether or not he was going to arrest him?

Further, and as discussed in more detail in the County’s Opposition to plaintiffs’ Motion in Limine No. 5, plaintiffs must establish that Dep. Mayfield and Mr. Hart had the specific intent to use coercion or intimidation to interfere with plaintiffs’ free speech rights. Cap. Dudley’s testimony is relevant to their intent; for example, if their conduct was within the industry-wide

² [Peace Officer Basic Training \(ca.gov\)](https://www.ca.gov/peace-officer-basic-training/)

1 law enforcement standard, then that is relevant to whether or not their conduct was intended to
2 enforce the law, or to violate it.

3 **III. CONCLUSION**

4 Cap. Dudley is well qualified to testify in this case, and he will offer admissible opinions
5 that are relevant to the issues but beyond the comprehension of the jury without his assistance.
6 Accordingly, plaintiffs' Motion in Limine No. 2 should be denied.

7
8 Dated: September 17, 2024

FENNEMORE WENDEL

9
10 By: /s/ Marc Brainich

11 William B. Rowell
12 Thiele R. Dunaway
13 Marc Brainich
14 Attorneys for Defendants
15 County of Alameda and Alameda County
16 Deputy Sheriff Joshua Mayfield
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CERTIFICATE OF SERVICE

Joseph P. CuvIELLO, et al. v. Rowell Ranch Rodeo, Inc., et al.
USDC – Northern District of California, Case No. 3:23-cv-01652-VC

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607.

On September 17, 2024, I served true copies of the following document(s) described as **DEFENDANT COUNTY OF ALAMEDA’S QUALIFIED NON-OPPOSITION TO PLAINTIFFS’ MOTION *IN LIMINE* NO. 2 TO EXCLUDE TESTIMONY BY DEFENDANTS’ POLICE PRACTICES EXPERT JAMES I. DUDLEY** on the interested parties in this action as follows:

Please see attached Service List.

BY EMAIL OR ELECTRONIC TRANSMISSION: By causing the document(s) listed above to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 17, 2024, at Oakland, California.

/s/ Lena S. Mason

Lena S. Mason

SERVICE LIST

Joseph P. CuvIELLO, et al. v. Rowell Ranch Rodeo, Inc., et al.
USDC – Northern District of California, Case No. 3:23-cv-01652-VC

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Attorneys for Defendants
HAYWARD AREA RECREATION AND PARK
DISTRICT and KEVIN HART

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,

Plaintiff,

v.

ROWELL RANCH RODEO, INC.,
HAYWARD AREA RECREATION AND
PARK DISTRICT, HAYWARD AREA
RECREATION AND PARK DISTRICT
PUBLIC SAFETY MANAGER/RANGER
KEVIN HART, and DOES 1 and 2, in
their individually and official capacities,
jointly and severally,

Defendants.

Case No. 3:23-cv-01652-VC

**DEFENDANTS HAYWARD AREA
RECREATION AND PARK DISTRICT AND
KEVIN HARTS' OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE NO. 2 TO
EXCLUDE TESTIMONY BY DEFENDANTS'
POLICE PRACTICES EXPERT JAMES I.
DUDLEY**

Trial: October 21, 2024

I. INTRODUCTION

Defendants submit this opposition to Plaintiff's motion in limine "2" in which Plaintiff seeks to exclude testimony by Mr. Dudley concerning legal standards or Defendants' state of mind is therefore irrelevant, more prejudicial than probative, likely to confuse the issues and mislead the jury, and a waste of this Court's time. Plaintiffs argue testimony or evidence by Mr. Dudley should be precluded from trial, pursuant to Federal Rules of Evidence 702, 703 and/or 705, 402, 403, 801 and 802. Defendant agrees that Mr. Dudley plainly cannot state legal conclusions. However, Defendants plan to offer Mr. Dudley as an expert in police practices and

1 to testify as to the industry standards and standard of care for law enforcement when interacting
 2 with First Amendment protestors in order to determine if Mr. Hart and the Alameda County
 3 deputies acted according to their training and standards.

4 **II. STANDARD OF REVIEW**

5 Although not specifically provided for in either the Federal Rules of Civil Procedure or
 6 the Federal Rules of Evidence, “[A] district court is vested with discretion as to whether to hear a
 7 motion to exclude evidence before trial in an in limine proceeding.” *U.S. v. Layton* 767 F.2d 549,
 8 554 (9th Cir. 1985); see also *Luce v. United States*, 469 U.S. 38, 41 (1984), Fed. R. Evidence
 9 103(c). In *Luce*, supra, the Court stated that “[i]n jury cases, proceedings shall be conducted, to
 10 the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by
 11 any means, such as making statements or offers of proof or asking questions in the hearing of the
 12 jury.” *Ibid.* Further, “[p]reliminary questions concerning the admissibility of evidence shall be
 13 determined by the court.” F.R.E.104(a).

14 A person is qualified to testify as an expert if he has special knowledge, skill, experience,
 15 training or education sufficient to qualify him as an expert on the subject to which his testimony
 16 relates. Fed. Rule Evid. 702. Rule 702 “require[s] that the judge apply his gatekeeping role...to
 17 all forms of expert testimony, not just scientific testimony,” and that “judges are entitled to broad
 18 discretion when discharging their gatekeeping function.” *Hangarter v. Provident Life ¶ Acc. Ins.*
 19 *Co.*, 373 F.3d 998, 1017 (9th Cir. 2004). Additionally, under Rules 701 and 702, opinions must
 20 be helpful to the trier of fact. In fact, “an expert may only testify as to ‘scientific, technical, or
 21 other specialized knowledge [that] will assist the trier of fact to understand the evidence or
 22 determine a fact in issue[.]’” *United States v. Tamman*, 782 F.3d 543, 552-553 (9th Cir. 2015).

23 **III. ARGUMENT**

24 Mr. Dudley’s expert qualifications include various roles held in the San Francisco Police
 25 Department, including as Police Officer, Sergeant, Lieutenant, and Captain as well as a police
 26 practices consultant and professor at San Francisco State University. *See* Report. Mr. Dudley is
 27 able to testify as to the training and available practices in dealing with First Amendment
 28 protestors on private and public property. Plaintiffs appear to desire to severely limit or exclude

the totality of Mr. Dudley’s testimony. This is prejudicial and unfair to Defendants. Specifically, Mr. Dudley would testify to training and practices of law enforcement in dealing with protestors. Specifically, Mr. Dudley can testify as to whether instructions given to the protestors were reasonable and in compliance with industry standards. This is instructive to the jury and is more probative than prejudicial. Mr. Dudley’s testimony will not invade the province of legal conclusions. His opinions will be limited to the training and industry standards of law enforcement regarding law enforcement’s dealings with demonstrators and First Amendment protests that will be instructive for the jury, highly relevant and not prejudicial to Plaintiffs.

In determining the standard law enforcement is trained to use and setting a standard of care for interactions with First Amendment protestors the jury would be informed of the words normally used when informing protestors of whether they were subject to arrest or detention.

IV. CONCLUSION

For the aforementioned reasons, Plaintiff’s MIL “2” should be denied in part and Mr. Dudley allowed to testify as to police practices and instructions given to the protestors being within industry standards.

Respectfully submitted,

Dated: September 17, 2024

ALLEN, GLAESSNER,
HAZELWOOD & WERTH, LLP

By: /s/ Nicholas D. Syren
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PARK DISTRICT and KEVIN HART

CERTIFICATE OF SERVICE

I am a resident of the State of California, over 18 years of age and not a party to the within action. I am employed in the County of San Francisco; my business address is: 180 Montgomery Street, Suite 1200, San Francisco, CA 94104. On September 17, 2024, I served the within: **DEFENDANTS HAYWARD AREA RECREATION AND PARK DISTRICT AND KEVIN HARTS' OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2 TO EXCLUDE TESTIMONY BY DEFENDANTS' POLICE PRACTICES EXPERT JAMES I. DUDLEY** on all parties in this action, as addressed below, by causing a true copy thereof to be distributed as follows:

SEE ATTACHED SERVICE LIST

☐ **By United States Mail:** I enclosed the document in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope/package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing documents for mailing. On the same day that the document is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

☐ **By Overnight Delivery:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **By E-Mail or Electronic Transmission:** Based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **(FEDERAL)** I declare under the laws of the United States of America that I am employed in the office of a member of the Bar of this court at whose direction the service was made and that the foregoing is true and correct.

Executed on September 17, 2024, at San Francisco, California.

Danielle Costes

SERVICE LIST

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